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September 29, 2023

VIA ECF

The Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

USDC SDNY
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Re: Malinowski v. Int'l Business Machines Corp. et al., No. 7:23-cv-08421(NSR)
Pettiford v. Int'l Business Machines Corp. et al., No. 7:23-cv-08517 (PMH)

Dear Judge Kaplan:

Pursuant to Federal Rule of Civil Procedure 42(a), Plaintiff Elaine Malinowski ("Malinowski"), together with Named Plaintiff consistent with the attached stipulation, hereby move this Court to consolidate two recently filed—and related—cases for all purposes.

Under Rule 42(a), a court may consolidate actions when they involve "a common question of law or fact." Fed. R. Civ. P. 42. Rule 42 is a tool "invoked to expedite trial and eliminate unnecessary repetition and confusion, and it vests a district court with broad discretion to consolidate actions[.]" *Marcaurel v. USA Waste-Management Resources, LLC*, 2021 WL 4940977 at *1 (S.D.N.Y. Sept. 3, 2021). A determination on whether to consolidate actions "involves weighing considerations of convenience, judicial economy, and cost reduction while ensuring that the 'paramount concern for a fair and impartial trial' is honored." *Combs v. Warner Music Group*, 2020 WL 8642133 at *1 (S.D.N.Y. Nov. 10, 2020) (quoting *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir. 1990)). "Considerations of judicial economy strongly favor simultaneous resolution of all claims growing out of one event." *Bank of Montreal v. Eagle Assocs.*, 117 F.R.D. 530, 532 (S.D.N.Y. 1987) (internal quotations omitted).

Two class action complaints have been filed against Defendants International Business Machine Corporation and Johnson & Johnson Health Care Systems, Inc. in the Southern District of New York, each of which seeks to hold both Defendants responsible for an alleged data breach on or around August 2, 2023. Plaintiffs in two cases—Elaine Malinowski and Michele Pettiford—are yet to serve their complaints.

MEMO ENDORSED

The Honorable Lewis A. Kaplan

August 29, 2023

Page 3

Both of the cases arise from the same event, involves alleged exposure of personal information maintained by Defendants, name the same two defendants, and assert similar theories of Named Plaintiffs' and putative class members' entitlement to relief. The parties believe that consolidating *Malinowski* and *Pettiford* will serve the interests of convenience, judicial economy, and cost reduction, and will not risk prejudice to any party. In particular, consolidation will allow for coordinated motion and discovery practice as well as trial proceedings.

This Court has previously consolidated cases arising out of the same data breach. In *USA Waste Management Resources*, the Court consolidated several cases that "assert[ed] causes of action arising from a data breach of WM's computer systems that allegedly occurred between January 21 and 23, 2021[.]" 2021 WL 4940977 at *1 (internal quotations omitted). And, in *Warner Music Group*, the Court consolidated "nine cases [that] ar[o]se from the data breach that Warner Music Group announced in early September 2020." 2020 WL 8642133 at *1. Just as this Court found in *USA Waste Management Resources* and *Warner Music Group*, here, "consolidation is plainly warranted." *USA Waste-Management Resources, LLC*, 2021 WL 4940977 at *2; *Warner Music Group*, 2020 WL 8642133 at *2.

The Court also recently, on August 30, 2023 consolidated five data breach cases filed against *Teachers Insurance and Annuity Association of America*, one of which was filed by Counsel for *Malinowski*, Srourian Law Firm, P.C.

The parties propose that, within 14 days of consolidation of all five cases, the parties will file with the Court a case schedule that sets forth deadlines for an amended, consolidated complaint, Defendants' responsive pleading, and appointment of interim lead class counsel.

A Stipulation and Proposed Order memorializing the parties' proposed plan for consolidation and subsequent filings is attached. The parties are available to discuss this proposal if helpful to the Court.

Respectfully submitted,



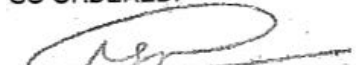
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Cc: All Counsel of Record

The parties' joint motion to consolidate is DENIED without prejudice to renew. The parties' motion is addressed to Judge Kaplan and appears to request consolidation of cases arising out of the same data breach implicated in cases already consolidated before Judge Kaplan. Moreover, the parties' motion references both the consolidation of "all five cases" as well as the consolidation of the two cases included in the letter's subject line. The parties are directed to submit a renewed motion clarifying the intended recipient and scope of the parties' consolidation request. The Clerk of Court is kindly directed to terminate the motion at ECF No. 3.

SO ORDERED:

Dated: October 20, 2023
White Plains, NY



HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE